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Remarks

Executive Secretary
14 Aug 85

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THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

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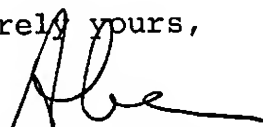
August 1, 1985

Dear Mr. Casey:

Enclosed is a copy of my speech to the ABA in London. It walks through some of the legal obstacles to effective enforcement of the relevant anti-hijacking conventions, and ends with some recommendations.

With best wishes.

Sincerely yours,


Abraham D. Sofaer

Enclosure:

As stated.

The Honorable
William J. Casey,
Director,
Central Intelligence Agency.



L-290

REMARKS OF HON ABRAHAM D SOFAER*
AMERICAN BAR ASSOCIATION CONVENTION
LONDON JULY 15 1985

FIGHTING TERRORISM
THROUGH LAW

THE TIMELINESS OF TODAY'S SESSION IS PAINFULLY OBVIOUS. WE HAVE JUST EMERGED FROM ANOTHER HARROWING ENCOUNTER WITH TERRORISM IN LEBANON. THE HIJACKING OF TWA-847 IS ██████ ONE IN A RASH OF RECENT TERRORIST ATROCITIES. SEVEN AMERICANS AND OTHER INNOCENT CIVILIANS REMAIN IN THE HANDS OF KIDNAPPERS IN LEBANON. LESS THAN ONE MONTH AGO NINE CIVILIANS AND FOUR OFF-DUTY U.S. EMBASSY GUARDS WERE GUNNED DOWN AT A SIDEWALK CAFE IN SAN SALVADOR. OVER 300 MEN, WOMEN AND CHILDREN WERE KILLED WHEN AN AIR INDIA FLIGHT DISAPPEARED MYSTERIOUSLY NOT FAR FROM HERE. A BOMB PUT ON ANOTHER FLIGHT IN THE SAME CANADIAN CITY ALMOST SIMULTANEOUSLY EXPLODED IN JAPAN, KILLING TWO BAGGAGE HANDLERS AND INJURING MANY OTHERS. A BOMB IN THE FRANKFURT AIRPORT DURING THE SAME WEEK KILLED 2 AND INJURED SEVERAL MORE. AND A DELICATE, BRILLIANTLY EXECUTED INVESTIGATION BY JUDGE WEBSTER'S BUREAU SAVED PRIME MINISTER RAJIV GANDHI FROM WHAT MIGHT WELL HAVE BEEN THE SAME FATE HIS MOTHER MET SOME MONTHS AGO.

* LEGAL ADVISER, U.S. DEPARTMENT OF STATE

EVEN MORE SOBERING IS THE REALIZATION THAT THE TIMELINESS OF TODAY'S TOPIC WAS PREDICTABLE. ASK YOURSELVES WHEN, DURING THE LAST 10 YEARS, THIS TOPIC WOULD HAVE LACKED TRAGIC IMMEDIACY. JUST NINE MONTHS AGO, PRIME MINISTER THATCHER NARROWLY ESCAPED INJURY WHEN A BOMB PLANTED BY THE PROVISIONAL IRA EXPLODED AT HER HOTEL IN BRIGHTON, KILLING FOUR AND INJURING 34. IN JULY 1983 AFTER REPEATED PLO ATTACKS, A GROUP OF JEWISH EXTREMISTS FIRED RANDOMLY AT ARAB STUDENTS AT THE ISLAMIC COLLEGE IN HEBRON, KILLING THREE AND WOUNDING 33 OTHERS. THE STATE DEPARTMENT HAS ESTIMATED THAT, FROM 1979 TO 1983, 2,093 PEOPLE WERE KILLED AS A RESULT OF INTERNATIONAL TERRORIST INCIDENTS, AND 4,349 INJURED. WE CAN BE GRIMLY CERTAIN THAT, IF THIS SUBJECT IS SET AGAIN FOR NEXT YEAR, WE WILL HAVE NEW TRAGEDIES TO TALK ABOUT.

OF COURSE, NOTHING WE SAY TODAY, OR DO TOMORROW, COULD PUT AN END TO THE EVIL THAT IS MODERN TERRORISM. AS LONG AS PEOPLE FIND IT IN THEMSELVES TO TORTURE AND MURDER INDISCRIMINATELY, TO ADVANCE THEIR POLITICAL ENDS, WE MUST LIVE WITH TERRORISM IN ITS MANY MANIFESTATIONS. AND WE ARE NOT ABOUT TO WITNESS ANY FUNDAMENTAL CHANGE IN HUMAN NATURE, OR THE SUDDEN ENLIGHTENMENT OF MANKIND THROUGH A DIVINE WILL. INDEED, A COMMON THREAD AMONG MOST TERRORISTS IS THE DEEP BELIEF EACH HOLDS IN THE JUSTICE OF HIS CAUSE. EACH HEARS, OR PRETENDS TO HEAR, HIS OWN PARTICULAR GOD CHEERING ON THE SIDELINES AS HE KILLS AND MAIMS THE INNOCENT -- BE THAT GOD JEHOVAH, ALLAH, MARX, A UTOPIAN VISION OF SOCIETY, OR SOME INSANE DREAM OF RACIST SUPREMACY.

CONTROLLING DOMESTIC CRIMINALITY IS ITSELF AN ENDLESS CHALLENGE, EVEN THOUGH EVERY CIVILIZED NATION HAS CRIMINAL LAWS PROHIBITING ANTISOCIAL CONDUCT, NATIONAL POLICE FORCES UNIVERSALLY EMPOWERED TO USE REASONABLE AND NECESSARY FORCE, AND COURTS WITH AUTHORITY TO PUNISH VIOLATORS. IN THE INTERNATIONAL ARENA, WHILE WE HAVE CONVENTIONS, AGREEMENTS, AND CUSTOMS THAT MAKE MANY TERRORIST ACTS UNIVERSAL CRIMES, INTERNATIONAL PRACTICE AND DOCTRINES GREATLY LIMIT THE ENFORCEABILITY OF THESE NORMS. FURTHERMORE, WE LACK ANYTHING LIKE AN INTERNATIONAL POLICE FORCE TO APPLY RULES OF CONDUCT, OR COURTS ROUTINELY TO ENFORCE THEM THROUGH PUNISHMENTS. EVEN WHEN WE CAN LAWFULLY APPLY FORCE AGAINST TERRORISTS, ITS UTILITY IS OFTEN LIMITED BY THE VALUE WE ATTACH TO HUMAN LIFE.

THE PROBLEM ALSO HAS A POLITICAL DIMENSION. WHILE A CONSENSUS CAN USUALLY BE FOUND AMONG THE CITIZENS OF PARTICULAR NATIONS AGAINST TERRORIST ACTS, ON THE INTERNATIONAL SCENE, AS PRESIDENT REAGAN NOTED LAST WEEK, A NUMBER OF STATES EITHER PROVIDE SAFE HAVENS FOR TERRORISTS OR ACTIVELY ENCOURAGE TERRORISM AND USE TERROR AS A WEAPON IN THEIR WAR AGAINST FREE GOVERNMENTS.

YOU CAN BEST APPRECIATE THE SPECIAL DIFFICULTY OF DEALING WITH INTERNATIONAL TERRORISM IF WE REVIEW SOME OF THE ISSUES THE U.S. GOVERNMENT HAS FACED DURING THE LATEST CRISIS. THE UNDERLYING FACTS ARE NO DOUBT FAMILIAR TO YOU ALL. THREE LEBANESE HIJACKERS FLEW FROM BEIRUT TO ATHENS WHERE TWO OF THEM BOARDED TWA FLIGHT 847, BOUND FOR ROME. THE THIRD MAN WAS UNABLE TO/...

.../GET A SEAT ON THE PLANE AND WAS SUBSEQUENTLY ARRESTED IN ATHENS. SHORTLY AFTER TAKEOFF THE HIJACKERS PRODUCED PISTOLS AND GRENADES, COMMANDEERED THE PLANE TO BEIRUT FOR REFUELING, AND THEN TOOK IT TO ALGIERS. THEY DEMANDED THAT THEIR CO-CONSPIRATOR IN ATHENS BE REUNITED WITH THEM IN EXCHANGE FOR THE RELEASE OF THE GREEK NATIONALS ON THE PLANE, AND THE GREEKS AGREED. THE PLANE WAS THEN FLOWN BACK AND FORTH BETWEEN BEIRUT AND ALGIERS. IN THE PROCESS, ALL BUT 39 PASSENGERS AND CREW WERE RELEASED. ON THE GROUND IN BEIRUT THE HIJACKERS MERCILESSLY BEAT AND THEN SHOT TO DEATH ROBERT STETHEM, A YOUNG U.S. NAVY DIVER. THEY WERE THEN JOINED BY MEMBERS OF BOTH HIZBOLLAH AND AMAL FORCES, WHO TOOK A DOZEN PASSENGERS OFF THE PLANE FOR "SAFEKEEPING." THE HIJACKERS SOUGHT PUBLICITY, AND GOT IT. ~~THE WORLD WAS~~ ^{THE WORLD WAS} TREATED TO A MEDIA EXTRAVAGANZA THAT GAVE TASTELESSNESS A NEW MEANING .

THE IMMEDIATE PROBLEM POSED BY THE HIJACKING WAS TO GET BACK THE HOSTAGES SAFELY AND IN A MANNER CONSISTENT WITH OUR OVERALL SECURITY INTERESTS. PRESIDENT REAGAN AND SECRETARY OF STATE SHULTZ SET THE RULES FOR OUR CONDUCT: NO DEALS, MAXIMUM DIPLOMATIC PRESSURE, AND THE USE OF REASONABLE, DISCRIMINATE FORCE, IF NECESSARY. THEIR EFFORTS SUCCEEDED WITHOUT FURTHER LOSS OF LIFE. WE CONTINUE TO SEEK THE RETURN OF ALL OTHER HOSTAGES IN LEBANON.

IN ADDITION TO OBTAINING THE SAFE RELEASE OF THE PASSENGERS AND CREW, WE ARE WORKING TO ACHIEVE FOUR ADDITIONAL OBJECTIVES: TO BRING THE HIJACKERS TO JUSTICE: TO GET BACK THE PLANE: TO END THE ROUTINE USE BY TERRORISTS OF THE BEIRUT INTERNATIONAL AIRPORT: AND TO IMPROVE SECURITY AT THE ATHENS AIRPORT. WE ARE ALSO SEEKING TO RALLY LIKE-MINDED GOVERNMENTS TO JOIN US IN IMPROVING WORLD-WIDE SAFEGUARDS FOR CIVIL AVIATION SECURITY.

THE HIJACKERS

YOU WILL RECALL THAT ONE OF THE HIJACKERS WAS ARRESTED AT THE ATHENS AIRPORT. AS A PARTY TO THE TOKYO, HAGUE AND MONTREAL CONVENTIONS AGAINST TERRORISM, GREECE HAD THE RESPONSIBILITY TO HOLD THE WOULD-BE HIJACKER UNTIL HE WAS EXTRADITED OR PROSECUTED. INSTEAD, GREEK OFFICIALS SWAPPED THE TERRORIST FOR THE GREEK NATIONALS ON THE PLANE.

RELEASING THE HIJACKER IN EXCHANGE FOR SOME OF THE HOSTAGES WAS A GRAVE MISTAKE. THE REASON NO EXCEPTION IS WRITTEN INTO THE OBLIGATION TO EXTRADITE OR PROSECUTE AIRCRAFT HIJACKERS IS SIMPLY THAT, ONCE ONE BEGINS TO MAKE EXCHANGES WITH TERRORISTS, THERE IS NO END TO THE TYPES OF DEALS THEY WOULD DEMAND. KUWAIT, TO ITS CREDIT, HAS REPEATEDLY RESISTED TERRORIST DEMANDS THAT IT RELEASE CONVICTED TERRORISTS. WE HAVE INSISTED THAT GREECE ABIDE BY ITS OBLIGATION TO HOLD ALLEGED HIJACKERS UNTIL EXTRADITION OR PROSECUTION.

AS YOU WILL SEE, HOWEVER, WE CAN DO LITTLE MORE ON THIS ISSUE UNTIL THE CONVENTIONS ARE MADE ENFORCEABLE.

BY SIGNING THE HAGUE AND MONTREAL CONVENTIONS, LEBANON AGREED TO EXTRADITE OR PROSECUTE TERRORIST HIJACKERS. IN ADDITION, CUSTOMARY PRINCIPLES OF INTERNATIONAL LAW SUPPORT THE PRINCIPLE THAT PIRATES MUST BE PUNISHED EITHER IN THE REQUESTING OR REQUESTED NATION. UNDER LEGISLATION PASSED LAST FALL, THE TWA HIJACKING IS A CRIME UNDER U.S. LAW. WE HAVE FILED A FORMAL DEMAND THAT LEBANON FULFILL ITS INTERNATIONAL OBLIGATIONS TO TAKE LAW ENFORCEMENT MEASURES AGAINST THOSE RESPONSIBLE FOR THE TWA HIJACKING AND THE CRIMES THEY COMMITTED, ATTORNEY GENERAL MEESE WILL DETERMINE WHEN TO FILE A FORMAL DEMAND FOR EXTRADITION, AND WHAT OTHER LAW ENFORCEMENT OPTIONS TO PURSUE.

THE PRESS GREETED WITH SCEPTICISM OUR INTENTION TO PURSUE THE HIJACKERS THROUGH LEGAL MEANS. THEY QUESTIONED THE POINT OF SUCH AN EFFORT AND IF THE GOVERNMENT OF LEBANON CANNOT CONTROL ITS AIRPORT, HOW CAN WE REASONABLY EXPECT IT TO INVESTIGATE, IDENTIFY, ARREST, AND PROSECUTE THE INDIVIDUALS RESPONSIBLE FOR THE HIJACKING?

THE SHORT ANSWER TO THIS IS THAT WE CANNOT KNOW IN ADVANCE THAT AN EFFORT TO ARREST THE HIJACKERS IS BOUND TO FAIL. LEBANON IS A COMPLEX PLACE, AND IF THE NEWS STORIES ARE ACCURATE - THAT AN EFFORT TO ARREST THEM IS BEING MADE, A /.....

...../GOOD RESULT COULD COME ABOUT THROUGH CIRCUMSTANCES
WE CANNOT NOW ENTIRELY ANTICIPATE.

IN ANY EVENT, LEBANON'S INABILITY TO ARREST THE OFFENDERS
CANNOT RELIEVE IT OF ITS OBLIGATION TO TRY, AND TO KEEP
TRYING UNTIL IT SUCCEEDS. OUR EFFORT TO BRING THESE
HIJACKERS TO JUSTICE HAS SIGNIFICANCE FAR BEYOND THE
INDIVIDUAL CASE. WE MUST PERSIST IN ASSERTING THAT THE RULE
OF LAW BE OBEYED, IF WE WANT TO RETAIN THE HOPE THAT SOME DAY
IT WILL BE OBEYED.

DON'T LET THIS DISCUSSION MISLEAD YOU. IF LEBANON OR GREECE
REFUSED TO CARRY OUT THEIR OBLIGATIONS UNDER THE ANTI-TERRORISM
CONVENTIONS, OUR PROSPECTS FOR ENFORCEMENT WOULD BE SLIGHT.
THUS FAR, NEITHER THE CONVENTIONS NOR CUSTOMARY LAW HAVE BEEN
HELD TO CREATE ENFORCEABLE DUTIES. PARTIES TO THE CONVENTIONS
HAVE REPEATEDLY REFUSED TO EXTRADITE OR PROSECUTE HIJACKERS,
AND INDEED HAVE SUPPORTED THEIR ACTIVITIES. KEVIN CHAMBERLAIN,
A LEGAL COUNSELLOR OF BRITAIN'S FOREIGN AND COMMONWEALTH OFFICE,
WROTE OF THE CONVENTIONS IN A RECENT ARTICLE THAT "THERE IS NO
EFFECTIVE MEANS OF ENSURING COMPLIANCE WITH THEIR PROVISIONS."
(p 617)

FRUSTRATION OVER THE REFUSAL OF SEVERAL NATIONS TO COMPLY
WITH THE ANTI-HIJACKING CONVENTIONS LED THE ECONOMIC SUMMIT
SEVEN TO ISSUE A "DECLARATION" AT BONN IN 1978. IN IT, THE
SEVEN CO-DECLARANTS, WHOSE AIRLINES ACCOUNT FOR ABOUT 70% /.....

...../OF ALL CIVIL AVIATION, "JOINTLY RESOLVED THAT THEIR GOVERNMENTS SHOULD TAKE IMMEDIATE ACTION TO CEASE ALL FLIGHTS" CONNECTED WITH ANY COUNTRY THAT "REFUSES EXTRADITION OR PROSECUTION OF THOSE WHO HAVE HIJACKED AN AIRCRAFT AND/OR DO NOT RETURN SUCH AIRCRAFT....." THUS FAR, THE DECLARATION HAS BEEN INVOKED ONLY ONCE, AGAINST AFGHANISTAN IN 1981: ON THAT OCCASION, MOREOVER, THE SANCTION WAS IMPOSED ONLY AFTER THE DECLARANTS HAD GIVEN AFGHANISTAN THE ONE-YEAR NOTICE, ARGUED BY SOME TO BE REQUIRED BY BILATERAL AVIATION AGREEMENTS.

IF THE HIJACKERS ARE NOT BROUGHT TO JUSTICE, WE WILL BE FACED WITH THE OPTION OF SEEKING ACTION UNDER THE BONN DECLARATION. HOWEVER PERSISTENTLY WE PURSUE THIS COURSE, IT IS A DIFFICULT ONE, DEPENDING ON THE WILL AND COURAGE OF SEVEN NATIONS, EACH WITH INDEPENDENT INTERESTS AND VIEWS.

LET ME DEPRESS YOU FURTHER WITH THE FACT THAT, EVEN WHEN A HIJACKER IS ARRESTED, THAT IS NO ASSURANCE HE WILL BE BROUGHT TO JUSTICE. MANY STATES WILL NOT EXTRADITE THEIR OWN CITIZENS, OR WILL EXTRADITE THEM ONLY FOR THE MOST HEINOUS CRIMES.

A STATE THAT DOES NOT PROVIDE FOR THE DEATH PENALTY UNDER ITS LAWS MAY REFUSE TO EXTRADITE A PERSON FOR AN OFFENCE THAT COULD BE PUNISHED BY DEATH IN THE REQUESTING STATE, OR IT MIGHT CONDITION EXTRADITION ON ASSURANCES THAT THE DEATH PENALTY WILL NOT BE IMPOSED.

AN ESPECIALLY IMPORTANT OBSTACLE TO EXTRADITION IS THE SO-CALLED "POLITICAL OFFENSE" EXCEPTION FOUND IN THE EXTRADITION LAW OF MANY STATES. AS INTERPRETED BY THE U.S. COURTS, THIS EXCEPTION PROHIBITS THE EXTRADITION OF ANY PERSON WHOSE CRIME, HOWEVER SERIOUS, WAS COMMITTED IN THE COURSE OR IN FURTHERANCE OF CIVIL WAR, INSURRECTION, OR POLITICAL COMMOTION. INVOKING THIS DOCTRINE, AMERICAN COURTS HAVE REFUSED THE LAST FOUR EXTRADITIONS SOUGHT BY THE EXECUTIVE BRANCH OF IRA MEMBERS GUILTY OF MURDERING POLICE AND MILITARY OFFICIALS. FRANCE HAS REFUSED TO EXTRADITE AMERICANS TO THE U.S. ON THIS BASIS, WHERE THEY CLAIMED TO HAVE COMMITTED THEIR CRIMINAL ACTS FOR POLITICAL REASONS, INCLUDING ALLEGED RACIAL OPPRESSION. OF COURSE A REFUSAL TO EXTRADITE LOSES ITS STING IF THE REQUESTED NATION PROSECUTES THE OFFENDER BUT NO ENFORCEMENT MECHANISM EXISTS TO ENSURE THAT A PROSECUTION WILL OCCUR, THAT A MEANINGFUL SENTENCE WILL BE IMPOSED AND SERVED. AND THESE OBSTACLES, I HASTEN TO ADD, DESCRIBE ONLY A FEW OF THE DIFFICULTIES IN BRINGING HIJACKERS TO JUSTICE.

THE PLANE

TWA'S AIRCRAFT REMAINS ON THE GROUND AT BEIRUT INTERNATIONAL AIRPORT, ALTHOUGH ARTICLE 11 OF THE TOKYO CONVENTION STATES THAT THE "CONTRACTING STATE IN WHICH THE AIRCRAFT LANDS..... SHALL RETURN THE AIRCRAFT AND ITS CARGO TO THE PERSONS LAWFULLY ENTITLED TO POSSESSION." ARTICLE 9 OF THE HAGUE CONVENTION IMPOSES A SIMILAR OBLIGATION, AND THE BONN DECLARATION APPLIES TO A NATION'S REFUSAL TO RETURN A HIJACKED PLANE.

WE ARE ASSISTING TWA IN GETTING BACK ITS PLANE. THE RISKS ASSOCIATED WITH USING AN AMERICAN CREW HAVE COMPLICATED THE SITUATION. HERE, TOO, THE GOVERNMENT OF LEBANON CLAIMS IT IS WILLING TO COMPLY WITH ITS OBLIGATION, BUT THE ABSENCE OF EFFECTIVE CONTROL OVER THE AIRPORT HAS POSED SUBSTANTIAL OBSTACLES.

ATHENS AND BEIRUT AIRPORTS

IMMEDIATELY AFTER THE HIJACKING WE TOOK STEPS TO ENSURE THAT OUR CONCERNS ABOUT SECURITY AT BOTH THE ATHENS AND BEIRUT AIRPORTS WERE MADE KNOWN TO THE TRAVELLING PUBLIC. ATHENS AIRPORT HAS BEEN THE OBJECT OF SPECIAL SCRUTINY ON SECURITY GROUNDS FOR MANY YEARS, NOT ONLY BY THE U.S., BUT ALSO BY OTHER GOVERNMENTS. DEFICIENCIES THERE HAD BEEN ASSOCIATED WITH OTHER TERRORIST ACTS, INCLUDING THE HIJACKING OF TWA-847, GIVEN THE HISTORY OF REPEATED INCIDENTS, THE ISSUANCE OF A TRAVEL ADVISORY BECAME IMPERATIVE. THE GREEK GOVERNMENT HAS OBJECTED TO THIS MEASURE, CLAIMING IT TO BE UNFAIR AND DISCRIMINATORY. WE ACTED RELUCTANTLY, HOWEVER, AND ONLY BECAUSE PRIOR EFFORTS TO IMPROVE SECURITY AT ATHENS HAD BEEN UNSUCCESSFUL.

INTERNATIONAL LAW OBLIGES ALL STATES ENGAGED IN INTERNATIONAL CIVIL AVIATION TO ENSURE ADEQUATE SECURITY AT THEIR AIRPORTS. IN 1974 ICAO ADOPTED ANNEX 17 TO THE CHICAGO CONVENTION ON INTERNATIONAL CIVIL AVIATION, ESTABLISHING STANDARDS AND RECOMMENDED PRACTICES ON SECURITY. THAT DOCUMENT HAS BEEN /....

...../AMENDED AND UPDATED SEVERAL TIMES AS EXPERIENCE WARRANTED, AND IT IS A USEFUL BENCHMARK AGAINST WHICH TO MEASURE THE SUFFICIENCY OF SECURITY STANDARDS AT AIRPORTS. WE BELIEVE, MOREOVER, THAT, WHEN EXPERIENCE DEMONSTRATES THAT SPECIAL CIRCUMSTANCES AT A PARTICULAR AIRPORT REQUIRE MORE STRINGENT MEASURES THAN THOSE RECOMMENDED BY ICAO TO PROVIDE NECESSARY SECURITY, THOSE MEASURES MUST BE ADOPTED. OUR TRAVEL ADVISORY WAS ALSO A LESSER REMEDY THAN IS EXPRESSLY AUTHORISED BY THE U.S. - GREECE BILATERAL AVIATION AGREEMENT, WHICH PROVIDES FOR THE SUSPENSION OF ALL AIR SERVICE FOR UNSAFE CONDITIONS.

MATERIAL IMPROVEMENTS HAVE BEEN MADE AT ATHENS AIRPORT AND WE ARE WORKING WITH THE GREEK GOVERNMENT TO BRING ABOUT THE NECESSARY IMPROVEMENTS. THE SECRETARY OF STATE LOOKS FORWARD TO BEING ABLE TO LIFT THE ADVISORY AT ATHENS, CONSISTENT WITH HIS OBLIGATION TO PROTECT AMERICAN CITIZENS ABROAD FROM UNWARRANTED DANGER.

LONG BEFORE THE HIJACKING, THE DEPARTMENT OF STATE HAD ADVISED U.S. CITIZENS THAT THE UNSTABLE CONDITIONS PREVAILING IN LEBANON MADE TRAVEL THROUGH BEIRUT AIRPORT UNSAFE. IN FACT, THE BEIRUT AIRPORT HAS BEEN INVOLVED IN 36 SEPARATE TERRORIST HIJACKINGS IN RECENT YEARS. AFTER THE LATEST INCIDENT, PRESIDENT REAGAN DETERMINED (PURSUANT TO SECTION 1114(A) OF THE FEDERAL AVIATION ACT) THAT LEBANON WAS ACTING INCONSISTENTLY WITH THE HAGUE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT AND SUSPENDED THE RIGHTS OF ALL U.S. AIR CARRIERS/....

...../TO ENGAGE IN AIR TRANSPORTATION, DIRECT OR INDIRECT, TO AND FROM LEBANON, AS WELL AS THE RIGHTS OF LEBANESE CARRIERS TO ENGAGE IN AIR TRANSPORTATION TO AND FROM THE UNITED STATES. IN ADDITION, TRANSPORTATION SECRETARY DOLE TOOK ACTIONS MODIFYING THE AUTHORITY OF MEA TO FLY TO THE U.S., AND PROHIBITING THE SALES OF AIR TRANSPORTATION TO, FROM, OR THROUGH LEBANON (PURSUANT TO THE FEDERAL AVIATION ACT, SECTIONS 402 AND 403). WE ARE ENCOURAGING LIKE-MINDED COUNTRIES TO JOIN IN THESE EFFORTS, WHICH WE INTEND TO CONTINUE UNTIL THAT AIRPORT IS EFFECTIVELY SECURED AGAINST USE BY TERRORIST GROUPS.

THE GOVERNMENT OF LEBANON HAS OBJECTED TO THESE MEASURES, CLAIMING IT SHOULD NOT BE PUNISHED FOR WHAT IT COULD NOT CONTROL. BUT IT IS PRECISELY LEBANON'S LACK OF CONTROL THAT JUSTIFIES THE MEASURES WE HAVE ADOPTED. UNTIL LEBANON ASSUMES CONTROL, IT IS OUR OBLIGATION TO DISCONTINUE AIR COMMERCE INVOLVING THAT AIRPORT. WE ARE READY TO CO-OPERATE WITH LEBANON IN ACCOMPLISHING THIS OBJECTIVE AS QUICKLY AS POSSIBLE. MEANWHILE WE HAVE DEMONSTRATED OUR WILLINGNESS TO ALLOW FLIGHTS TO THE U.S. BY LEBANESE AIRCRAFT, SO LONG AS THEY DO NOT USE THE BEIRUT AIRPORT. FOR EXAMPLE, FLIGHTS OF AN MEA-LEASED AIRCRAFT BETWEEN CAIRO AND NEW YORK HAVE NOT BEEN TERMINATED.

LEBANON ALSO CLAIMS THAT OUR ACTIONS VIOLATE THE U.S.-LEBANON BILATERAL AVIATION AGREEMENT. THAT AGREEMENT, LIKE MOST OTHER AVIATION BILATERALS, REQUIRES THAT DISPUTES BE SETTLED THROUGH CONSULTATION AND ARBITRATION, AND PROVIDES THAT IT CAN BE TERMINATED ONLY AFTER ONE YEAR'S NOTICE.

WE ARE CONFIDENT THAT THE MEASURES TAKEN WITH RESPECT TO THE BEIRUT AIRPORT ARE CONSISTENT WITH OUR BILATERAL AVIATION AGREEMENT WITH LEBANON, AND WITH OUR OBLIGATIONS UNDER INTERNATIONAL LAW. AIR TRAFFIC IS CONDUCTED EITHER WITHOUT ENFORCEABLE TRAFFIC RIGHTS, ON THE BASIS OF COMITY AND RECIPROCITY, OR UNDER BILATERAL AGREEMENTS OFTEN CONTAINING SAFETY AND SECURITY PROVISIONS. BOTH TYPES OF BILATERAL ARRANGEMENTS COMPLEMENT THE BASIC MULTILATERAL FRAMEWORK FOR INTERNATIONAL CIVIL AVIATION, THE CORE OF WHICH IS THE CHICAGO CONVENTION. THIS MULTILATERAL FRAMEWORK PLACES A HIGH PRIORITY ON THE SAFETY OF INTERNATIONAL CIVIL AVIATION AND INCORPORATES AS REQUIREMENTS THE ICAO STANDARDS FOR AVIATION SECURITY AND OTHER AIR TERRORISM CONVENTIONS. A SPECIFIC REFERENCE TO THESE ICAO STANDARDS IS INCLUDED IN ARTICLE 6 OF THE BILATERAL AGREEMENT WITH LEBANON. SOUND COMMERCIAL PRACTICE SUGGESTS THAT ACCEPTABLE STANDARDS OF SAFETY AND SECURITY FOR AERONAUTICAL FACILITIES ARE AN ESSENTIAL PRECONDITION TO THE OPERATION OF THIS NETWORK OF AVIATION RIGHTS. THEY ARE THEREFORE AN ESSENTIAL ELEMENT OF THE CONSENT OF A STATE TO BE BOUND TO A BILATERAL ACCORD.

FURTHERMORE, UNDER ESTABLISHED PRINCIPLES OF INTERNATIONAL LAW AN INTERNATIONAL AGREEMENT, SUCH AS A BILATERAL AVIATION ACCORD, MAY BE TERMINATED OR SUSPENDED WHEN A PROVISION ESSENTIAL TO ITS OBJECT HAS BEEN VIOLATED, OR WHEN FUNDAMENTAL CONDITIONS UNDERLYING IT HAVE CHANGED. THE CONCEPTS OF MATERIAL BREACH AND FUNDAMENTAL CHANGE OF CIRCUMSTANCE, REBUS SIC STANTIBUS (INCORPORATED IN ARTICLES 60 AND 62 OF THE VIENNA CONVENTION ON THE LAW OF TREATIES), CAN BE INVOKED BY PARTIES TO BILATERAL AVIATION AGREEMENTS WHEN/....

.... /AIR SAFETY AND SECURITY VIOLATIONS WARRANT. IN CASES OF URGENCY, THESE ACTIONS CAN BE TAKEN PROMPTLY, WITHOUT NOTICE PERIODS (AS ARTICLE 65 (2) OF THE VIENNA CONVENTION REFLECTS).

INTERNATIONAL LAW ALSO ALLOWS PROPORTIONATE ACTIONS IN CONNECTION WITH AGREEMENTS, IN RESPONSE TO BREACHES OF RELATED LEGAL DUTIES. WHATEVER THE PROVISIONS OF A COUNTRY'S PARTICULAR BILATERAL AVIATION AGREEMENT, ALMOST ALL PARTICIPANTS IN INTERNATIONAL CIVIL AVIATION ARE PARTY TO THE CHICAGO CONVENTION, WITH ITS AIRPORT SECURITY STANDARDS, AND TO THE AIR TERRORISM CONVENTIONS. THE DUTIES OF COUNTRIES UNDER THESE ACCORDS ARE OWED TO ALL STATES, AND TO THE TRAVELLING PUBLIC. LEBANON'S CONCEDED INABILITY TO ENSURE THE MINIMUM DEGREE OF SAFETY NECESSARY TO PERMIT AIR TRANSPORTATION SERVICES WITH OTHER COUNTRIES DEPRIVES IT OF THE CAPACITY TO INSIST UPON THE EXERCISE OF RECIPROCAL COMMERCIAL AIR RIGHTS.

OUR BILATERAL AGREEMENTS SHOULD EXPLICITLY PROVIDE THAT AIR SERVICES MAY BE SUSPENDED IN RESPONSE TO VIOLATIONS OF FUNDAMENTAL INTERNATIONAL OBLIGATIONS. A NUMBER OF OUR AGREEMENTS, INCLUDING THE ONE WITH GREECE, SPECIFICALLY AUTHORIZE US TO ENFORCE THE ICAO STANDARDS BILATERALLY BY SUSPENDING OPERATING RIGHTS. BUT NOT ALL AGREEMENTS CONTAIN SUCH A PROVISION, AND MOST FAIL TO INCORPORATE VIOLATIONS OF THE TOKYO AND HAGUE CONVENTIONS AS EXPRESS GROUNDS FOR SUSPENDING OPERATING RIGHTS. WE NEED TO RE-EXAMINE ALL OF OUR AGREEMENTS, TO URGE OTHER NATIONS TO DO THE SAME, AND TO/....

...../TAKE STEPS TO ENSURE THAT FUTURE ONES PROVIDE FOR MORE EFFECTIVE ENFORCEMENT OF INTERNATIONAL AIR SAFETY AND SECURITY OBLIGATIONS. A TIGHT WEB OF SUCH AGREEMENTS WOULD BE A POWERFUL INCENTIVE TO COUNTRIES TO ABIDE BY THEIR SOLEMN COMMITMENTS TO FIGHT TERRORISM AND TO ENSURE AVIATION SECURITY.

CONCLUSION

I AM SURE THAT SOME OF YOU ARE THINKING AT THIS POINT: FORGET ABOUT LAW; LET'S JUST GO IN THERE AND GET THE KILLERS. AND IF WE CAN'T FIND THEM, LET'S PUNISH THE CRAZED GROUPS TO WHICH THEY BELONG UNTIL THEY STOP HARMING INNOCENT PERSONS.

THE PRESIDENT HAS WARNED TERRORISTS AND THE STATES WHICH SUPPORT THEM THAT OUR PATIENCE HAS RUN OUT. THEY HAD BEST HEED HIS WARNING. INTERNATIONAL LAW RECOGNIZES THE RIGHT TO USE FORCE IN SELF-DEFENSE AGAINST ARMED ATTACKS. THE GROUPS THAT ARE RESPONSIBLE FOR ATTACKING US IN LEBANON, EL SALVADOR, AND ELSEWHERE, HAVE OPENLY ANNOUNCED THEIR INTENTION TO KEEP ON TRYING TO KILL AMERICANS. TO THE EXTENT THAT THEY ARE STATE SUPPORTED, OR BEYOND THE CAPACITY OF THEIR GOVERNMENTS TO CONTROL, WE ARE ENTITLED NOW TO USE NECESSARY AND PROPORTIONATE FORCE TO END SUCH ATTACKS. THIS ADMINISTRATION'S WILLINGNESS TO USE APPROPRIATE FORCE IN ITSELF HAS A DETERRENT AND MODERATING EFFECT ON OUR ENEMIES.

BUT THE POSSIBLE USE OF FORCE SHOULD NOT DISTRACT US FROM THE ROLE THAT LAW CAN PLAY IN THIS STRUGGLE. THE PRESIDENT HAS FLATLY REJECTED ANY IMPROPER USE OF FORCE. WE CANNOT BECOME

TERRORISTS. HE SAID, IN THE FIGHT AGAINST TERRORISM.

WHILE FORCE WILL PLAY ITS PART, THE PRESIDENT CHALLENGED US LAST WEEK TO DEVELOP "A BETTER DOMESTIC AND INTERNATIONAL LEGAL FRAMEWORK FOR DEALING WITH TERRORISM." -- TO "DEAL LEGALLY WITH LAWLESSNESS." AND WE STRESSED THE NEED TO MOVE OUR FOCUS FROM THE TACTICAL TO THE STRATEGIC, AND TO RECOGNISE THE INTERNATIONAL PATTERN OF TERRORIST ACTIVITY.

THE PRESIDENT HAS CALLED US TO THE HIGHEST DUTY LAWYERS CAN HAVE. HE HAS ASKED US TO FIGHT, WITHIN THE CONSTRAINTS OF OUR MORAL VALUES AND LEGAL TRADITIONS, AN ENEMY THAT SCORNS AND EXPLOITS OUR RESPECT FOR THOSE LIMITING RULES. THE INADEQUACIES AND OBSTACLES TO MEANINGFUL LEGAL ACTION AGAINST HIJACKING WHICH I HAVE REVIEWED TODAY, SHOULD HAVE DEMONSTRATED THAT WE HAVE A GREAT DEAL OF DIFFICULT AND FRUSTRATING WORK AHEAD OF US.

- WE HAVE TO CREATE MEANINGFUL ENFORCEMENT MECHANISMS, THROUGH BOTH BILATERAL AND MULTILATERAL ARRANGEMENTS, FOR THE OBLIGATIONS STATED IN ANTI-HIJACKING CONVENTIONS AND IN THE ICAO STANDARDS.
- WE NEED TO AMEND THE BONN DECLARATION TO PROVIDE FOR A RANGE OF SANCTIONS, AND FOR THEIR SWIFT IMPOSITION WHENEVER ANY IMPORTANT ASPECT OF THE AVIATION CONVENTIONS IS VIOLATED.

- WE MUST STRIVE TO OVERCOME THE RELUCTANCE EVEN OF CIVILIZED NATIONS TO EXTRADITE TERRORISTS. IN THIS CONNECTION WE HAVE MADE IMPORTANT, RECENT PROGRESS. WE JUST SIGNED WITH THE UNITED KINGDOM AN AMENDMENT TO OUR EXTRADITION TREATY WHICH WILL ELIMINATE THE POLITICAL OFFENCE EXCEPTION FOR MAJOR CRIMES, SUCH AS HIJACKING AND MURDER. THE ABA MUST JOIN US IN SEEKING SENATE CONFIRMATION OF THIS IMPORTANT STEP AGAINST TERRORISM; THE GUN IS NOT A PROPER SUBSTITUTE FOR THE BALLOT BOX IN FREE SOCIETIES WHICH OFFER FAIR SYSTEMS OF JUSTICE.

- WE MUST CONTINUE TO ENCOURAGE ALL LIKE-MINDED NATIONS TO JOIN US IN OUR EFFORTS. ONE OF THE MOST HEARTENING DEVELOPMENTS OF THE LATEST CRISIS IS THE CO-OPERATION AND SUPPORT WE RECEIVED FROM VIRTUALLY ALL NATIONS, INCLUDING THE UNITED KINGDOM, CANADA, AND ISRAEL, BUT PARTICULARLY FROM CONCERNED ARAB STATES. ALMOST ALL THE ARAB NATIONS CONDEMNED THE HIJACKING AND MURDER; JORDAN'S KING HUSSEIN CALLED IT THE WORK OF MAD DOGS. SYRIA AND ALGERIA PLAYED CONSTRUCTIVE ROLES IN HELPING TO GET OUR HOSTAGES BACK, AND PRESIDENT ASSAD MAY CONTINUE TO DEMONSTRATE GOOD WILL BY HELPING US RETRIEVE THOSE WHO REMAIN CAPTIVES IN LEBANON.

- WE MUST ORGANIZE OURSELVES MORE EFFECTIVELY TO DEAL WITH TERRORISM BY TREATING INTERNATIONAL LAW ENFORCEMENT AS A ROUTINE ASPECT OF FOREIGN RELATIONS. WE WILL USE, IN THIS EFFORT, OUR NEW AUTHORITY TO ISSUE REWARDS FOR/.....

...../ HELP IN BRINGING THOSE WHO ATTACK AMERICANS TO JUSTICE.

- FINALLY, WE MUST GET AHEAD OF THE TERRORISTS IN TECHNOLOGY. JUST AS WE HAVE ADOPTED A STRATEGIC DEFENSE INITIATIVE, WE NEED A TERRORIST DEFENSE INITIATIVE THAT ENABLES US TO DETECT AND DEFUSE TERRORIST THREATS BEFORE THEY CAN DO DAMAGE.

THE FIGHT AGAINST TERRORISM THROUGH LAW WILL [REDACTED] TAKE. INGENUITY, ENDURANCE, AND MONEY. WE MUST HARNESS THE OUTRAGE WE FEEL OVER THESE ACTS TO GIVE US THE STRENGTH TO CARRY ON THE STRUGGLE. WHEN YOU START TO TIRE, I SUGGEST YOU THINK ABOUT THE INNOCENT VICTIMS OF TERROR, INCLUDING YOUNG ROBERT STETHEM. A PASSENGER ON THE PLANE DESCRIBED STETHEM'S SCREAMS AS THE KIND THAT WENT ON UNTIL THE VERY BREATH WENT OUT OF HIS LUNGS. THE THOUGHT OF THOSE SCREAMS WILL KEEP ME IN THIS FIGHT FOR AS LONG AS IT TAKES TO PREVAIL.